



CITY OF BRUNSWICK

1 W. Potomac Street • Brunswick, Maryland 21716 • (301) 834-7500

Brunswick Planning Commission Minutes April 28, 2008

Commission Members Present: Chair Edward Gladstone, Vice Chair Connie Koenig, Secretary Walt Stull - Council Liaison, Don Krigbaum, Wayne Dougherty, and Ellis Burruss, Alternate.

Staff Present: Planning & Zoning Administrator Rick Stup, Development Review Planner Jack Whitmore, and City Public Works Administrative Coordinator Jim Castle.

Vice Chair Koenig called the meeting to order at 7:00 PM.

Minutes

The minutes of the March 24, 2008 meeting were reviewed and approved. (MOTION by Mr. Stull and seconded by Mr. Dougherty; unanimously passed.)

Chair

Ms. Koenig stated that the night's events were being televised and recorded .

Ms. Koenig asked all those in attendance who were going to speak to rise and be sworn in.

Mr. Gladstone entered the meeting.

Mr. Stup reviewed the Agenda Package and the distribution on the dais.

Mr. Burruss recused himself from the next case and left the dais and room.

Old Business

Zoning – Site Plans – Re-approval

Brandywine, LLC Property – Request for APFO and Site Plan Approval of 5603 SF Business/Office Building in the Northeast Quadrant of the intersection of East Potomac Street and First Avenue. Zoning Classification: B-3; Water and Sewer Classification: W-1, S-1; BR-SP-04-03-SP

Staff Presentation and Recommendation

Mr. Whitmore presented the Staff Report for the request for a re-approval of the Site Plan Approval. He stated that, an extension of the Site Plan and APFO Approval was granted on February 26, 2007. The Site Plan would have expired on February 25, 2008 because the applicant failed to request extension of the approval. Due to the huge administrative work, Staff failed to notify the applicant in advance of the expiration in order for them to request an extension. Once Staff became aware of the situation, the Zoning Administrator Temporarily Extended the Site Plan Conditional Approval under Article 5, Section 5.12, 2. of the Zoning Ordinance and APFO Approval until the April 28, 2008 Planning Commission Meeting.

The applicant included a letter with the Re-Approval submission that states nothing has changed from previous approvals, and APFO Compliance/Mitigation Letter remains valid.

Normally, Staff does not support the extension of approvals for projects when the plan conditions have not been met and/or the plan is not signed by the Chair. However, since this is a Re-Approval and the applicant is subject to any new requirements, Staff can support the Re-Approval of the Site Plan and APFO Approval to coincide with the Site Plan Expiration.

RECOMMENDATION:

The required action is two fold. The first is APFO Approval and the second is the Site Plan Request.

APFO

Staff concurred with the APFO Compliance/Mitigation Letter submitted by the Applicant, and applicant's letter stating that nothing has changed with regard to APFO. Therefore recommends APFO Re-Approval to coincide with the Site Plan Re-Approval.

Site Plan

Staff recommends Re-Approval of the Site Plan Approval with the following original applicable conditions:

1. Issues raised in Staff Report Addressed to Staff's satisfaction.
2. Address original Check Sheets and Staff TAC Meeting Comments that still are not addressed to Staff's satisfaction.
3. Need FRO Approval prior to Improvement Plan signature.
4. Final or changes to the lighting must be approved by Staff in accordance with the Dark Sky Principle.
5. The submission and approval of the final sign details must be to Staff's satisfaction and added to the Site Plan if necessary.
6. Applicant bound by their testimony.
7. BOA Condition compliance to Staff's satisfaction or the Site Plan to be brought back to the Planning Commission.
8. Site Plan signature withheld until the end of the BOA Appeal Period.

Planning Commission Minutes
April 28, 2008
Page 3 of 11

9. Address appropriate Agency Comments.

Messrs. Whitmore and Stup answered Commission questions.

Applicant:

Mr. Stup stated that due to communication problems, the applicant indicated that he could not have his consultant attend the meeting. If there were any questions that Staff could not answer, the Commission could ask Mr. Burruss, applicant, to address them with the Commission. Mr. Stup then answered the Commission Questions for the applicant.

Public Comment: None.

Rebuttal: None.

Decision:

Ms. Koenig made a motion to re-approve the APFO in accordance with the Staff Recommendation; Mr. Krigbaum seconded the motion.

VOTE: Yea 5 Nay 0

Mr. Stull made a motion to re-approve the Site Plan with all previous Site Plan Approval Conditions in accordance with Staff Recommendation; Ms. Koenig seconded the motion.

VOTE: Yea 5 Nay 0

Mr. Burruss entered the meeting.

New Business

Zoning – Site Plans

Approval

Water Treatment Plant Expansion – Request for Site Plan Approval for proposed addition, located on the south side of East Potomac Street, West of Fourth Avenue. Zoning Classification: I-2; Water and Sewer Classification: W-1 & S-1; BR-SP-08-01-SP

Staff Presentation and Recommendation

Mr. Whitmore presented the Staff Report for approval of the proposed expansion of the Water Treatment Plant, and additionally stated that the Contract Number, W-11 must be added to the Site Plan.

Staff recommended Approval of the Site Plan in accordance with the Staff Report and with the following specific conditions:

Planning Commission Minutes
April 28, 2008
Page 4 of 11

1. Issues raised in Staff Report Addressed to Staff's satisfaction.
2. Performance Standards must be addressed with compliance letter and/or compliance noted on the Site Plan.
3. Side Yard Setbacks must be corrected on the Site Plan to reflect Zoning Ordinance standards.
4. Site Plan cannot be signed until the BOA Variance Appeal Period has ended on May 24, 2008.
5. The distance between the street pavement and the parking spaces must be labeled.
6. Parking Tabulation must be revised to Staff Satisfaction.
7. Parking Note 15 must be corrected to Staff's satisfaction.
8. Parking Signage for the Spaces for Loading Visitors and City Vehicles must be designated on site and shown on the Site Plan to Staff's satisfaction.
9. The Foundation Plant List must be revised to be titled Landscape Chart and add the additional number of plants, and revise the Site Plan to indicate the location of the additional plants to Staff's satisfaction.
10. Landscaping must include the Parking area, and be to Staffs Satisfaction.
11. The WTP Street and Sanitary Sewer Pump Station Address, 308 and 324 respectively, must be placed on the structures in accordance with the Countywide Requirements prior to issuance of the U&O Permit, and a note added to the Site Plan.
12. Applicant bound by their testimony.
13. BOA Condition compliance to Staff's satisfaction or the Site Plan to be brought back to the Planning Commission.
14. Site Plan signature withheld until the end of the BOA Appeal Period.
15. Address appropriate Agency Comments.
16. Contract Number, W-11 to be added to the Site Plan.

Messrs. Whitmore and Stup answered Commission questions with regard to the proposed site plan and Staff Recommendation.

Applicant:

Mr. Adam Rife, MHG, for Brunswick Crossing, LLC acting as Project Manager for the City, indicated that they had no objections to the Staff Recommendation and answered questions from the Planning Commission.

Public Comment: None.

Rebuttal: None.

Decision:

Mr. Krigbaum made a motion to approve the request in accordance with Staff Recommendation and Conditions; Mr. Dougherty seconded the motion.

VOTE: Yea 5 Nay 0

Brunswick Volunteer Fire Company – Request for Additional Accessory Use
Approval within the existing Fire House structure, located on the north side of West
Potomac Street, east of North Delaware Avenue. Zoning Classification: R-1; Water
and Sewer Classification; W-1 & S-1; BR-SP-08-03-ZC-USE

Staff Presentation and Recommendation:

Mr. Whitmore presented the Staff Report for the Additional Accessory Use within the existing Fire House Structure, and stated that the Brunswick Volunteer Fire Company (BVFD) has initiated the process to obtain a Federal Firearms License for the purpose of enhancing their Fund Raising Activities. As part of the process the U.S. Dept. of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) contact the City P&Z Staff by telephone to inquire about any local Zoning Requirements. This was followed by an e-mail from ATF requesting Local Zoning Clarification of Requirements, which a response was sent on March 21, 2008. Staff to include the City Attorney met with the applicant and their attorney where it was agreed that a Zoning Certificate Application was required and would be processed for Planning Action as a revised Site Plan. However, since the Fire House was an existing structure that pre-dated the Zoning Ordinance and there were no exterior additions proposed, a Site Plan would not be required. As background for Staff's interpretation, the Zoning Ordinance states the following:

- Article 5.1 – “No property shall be used, and no building or structure or portion thereof shall be located, erected, constructed, reconstructed, extended, enlarged, converted or structurally altered, except in conformance with the regulations of this ordinance.”
- Article 5.12, A. 1. – “..... No Zoning certificate and/or building permit, as described in Section 6.2, will be issued, and no structure or use will be established except in conformity with the required site plan as approved by the Planning Commission.”
- Article 5.12, A. 1. a. – “Non-Residential Site Plan: Required for any proposed construction for the purpose of establishing a commercial, industrial, mixed use or other non-residential use in any district in which such use is permitted, or for modifications, alterations, or improvements (as described in Section 6.2) to commercial, industrial or other non-residential sites”.
- Article 5.12, A. 2. – “No Zoning certificate and/or building permit will be issued, and no structure or use will be established except in conformity with a site development plan approved by the Planning Commission, or their authorized representatives”.
- Article 5.12, A. 3. – “.....The Zoning Administrator may process minor changes. However, he will, in his discretion, refer any proposed changes to the Planning Commission for approval”.
- Article 6.2 – “It shall be unlawful to locate or begin the excavation, erection, construction, reconstruction, extension, conversion, or structural alteration of any building or structure, or establish a new use without first obtaining a zoning certificate from the Zoning Administrator or authorized agent, as well as a Frederick County Building Permit from Frederick County Office of Permits and Inspection, as required”.

- Article 11.3 A. of the Zoning Ordinance entitled, "Accessory Permitted Buildings/Structures and Uses", allows the following: "Those buildings/structures and uses customarily accessory and incidental to the principal permitted uses and authorized special exceptions of the R-1 District".
- The Fire Company use is defined as an Essential Services and Facilities in Article 4, but Essential Services and Facilities are subject to the requirements of Article 21, Section 21.1. Section 21.1 states, "Essential services and the associated facilities necessary for the provision of those services by public utility companies, state, and local governments, or other parties, are permitted in any zoning district. However, new service extensions or additions and enlargements may be subject to site plan review by the Planning Commission, to ensure that proposed services are in accordance with the Master Plan, do not unnecessarily create an obstruction to movement and community growth, and do not prove themselves objectionable by reason of hazard, unsightliness, odor, smoke, gas, fumes, noise, vibration, radiation, refuse matter, or water-carried waste. Site plans shall conform to the requirements of Section 5.12 of this Ordinance." (Staff considers the request also accessory to the Essential Services and Facilities Use.)

Since a Federal Firearms License is the center of the request and it is questionable whether the proposed items associated for the additional accessory are uses customarily accessory and incidental to the principal permitted uses, the Zoning Administrator was uncomfortable processing the Zoning Certificate without Planning Commission Approval of the additional accessory use. Therefore it is before you as a revised Site Plan for consideration.

As part of the submission and justification the applicant has submitted, the Application for Federal Firearms License, an Attachment to the Zoning Certificate Application and an Addendum to the Attachment under the signature of the attorney for the applicant. There are numerous activities permitted with a Federal Firearms License that is permitted. However, it is Staff's understanding that those can and will be limited by the application and final approval by ATF. Additionally, Staff is concerned about the safety and welfare of the general public in addition to the physical space and traffic that would be generated by the issuance of the License.

The ATF Application indicates that the purpose is for "Buying & Raffle Firearms". The location of the License will be the Fire House at 223 West Potomac Street in Brunswick. Hours of Operation will be Monday, Tuesday, Thursday and Friday 6:00 PM to 8:00 PM and Saturday 9:00 AM to 12:00 PM all by Appointment Only. The Applicant Description of License Type 01/02: "Dealer (01), Including Pawnbroker (02), in Firearms Other than Destructive Devices (Includes: Rifles, Shotguns, Pistols, Revolvers, gunsmith activities and National Firearms Act (NFA) Weapons)".

The Attachment to the Zoning Certificate Application states that the "Federal Firearms License for the sole purpose of being able to purchase their own firearms for certain fund raising activities, namely, their gun bonanza. By being able to purchase their own firearms they would be able to save the 25%-35% mark up which they currently pay to a dealer." It further states the following: "They will not be retailing any firearms.", "They

Planning Commission Minutes

April 28, 2008

Page 7 of 11

will store the firearms on the premises until the appropriate clearances are received and the prize winner is allowed to pick up the firearms.”, and “No new construction, no additions, nor alterations to the building will occur.”

Staff concurs with these proposals.

The Addendum to the Attachment states the following: “the Fire Company will be using an area approximately 20 square feet for storage.”, The area is in a secured area of administration with limited access by a selected few members.”, “The area will meet required security to include video surveillance.”, “Only long guns and no hand guns will be stored on the premises.”, and “No ammunition is being kept on the premises.” Staff concurs with these proposals. (Staff suggests that the access list be kept current with contact information and provided to the Chief of Police for community security.)

Staff recommends approval of the amended Site Plan Use for the requested Accessory Use to permit the proposed activities associated with the Federal Firearm License in accordance with the Staff Report and the following specific conditions:

1. The Planning Commission finds that the Firearms License use for Fund Raising is a Customary Accessory and Incidental Activity of the Fire Company under the stated circumstance and proposed use & proffered restrictions.
2. Federal Firearms License for the sole purpose of being able to purchase their own firearms for certain fund raising activities, namely, their gun bonanza.
3. Hours of Operation for the purpose of the Federal Firearms License is Monday, Tuesday, Thursday and Friday 6:00 PM to 8:00 PM and Saturday 9:00 AM to 12:00 PM all by Appointment Only.
4. No other activity permitted by the Licenses is permitted to include and Retail/Wholesale Activities not related to the Fund Raising Activities.
5. The approximately 20 square feet for storage area is in a secured area of administration with limited access by a selected few members.
6. They will store the firearms on the premises until the appropriate clearances are received and the prize winner is allowed to pick up the firearms.
7. No new construction, no additions, nor alterations to the building will occur.
8. Only long guns and no hand guns will be stored on the premises.
9. No ammunition will be stored on the premises.
10. No new/additional signage, exterior lights or additions/revisions to parking and access.
11. Address Zoning Certificate Review Comments to Staff's satisfaction.
12. Applicant bound by their testimony and application.
13. Address appropriate Agency Comments.

Messrs. Whitmore and Stup answered questions from the Commission.

Applicant:

Mr. Lawrence Heffner, Russell & Heffner P.A., presented the applicant's case with Messrs. Roy Lipscomb and George Clary, and answered Commission Questions. They stated that there would be no more than 30 guns on site at any one time, and that there is currently 4 Gun Bonanzas a year held at the Fire House.

Commissioner Koenig asked about guarantees of background checks. She stated she has concerns about the safety for the community in the R-1 zone and had concerns about someone coming out of an event and being able to load the gun in the street. Commissioner Koenig is concerned about a person intent on doing harm in the community and that this decision could set a precedent in the R-1 zone for this customary use.

Public Comment:

Mr. Rick Weldon spoke on behalf of the proposal and commented on the ATF Background Check and the Fire Company's concern for safety in the community.

Rebuttal: None.

Decision:

Mr. Stull made a motion to approve the Site Plan in accordance with the Staff Recommendation and Staff Report; Mr. Dougherty seconded the motion.

VOTE: Yea 4 Nay 1 (Ms. Koenig)

Capital Improvements Program (CIP)

Capital Improvements Program (CIP) – FY 2009 – 2013 Capital Improvements Plan - Review of the Draft FY 09–13 CIP for consistency with the City of Brunswick Master Plan for recommendation to the Mayor & Council

Mr. Stup presented the background of the responsibilities of the Planning Commission under the authority of 66B of the Annotated Code of Maryland. He followed with an overview of the process and a summary of the index.

Staff recommended that the City of Brunswick Planning Commission find:

1. That the location, character, and extent of the capital facilities project in the Draft Fiscal Years 2009-2013 Capital Improvement Program generally conform to the policies and guidelines of the Master Plan.
2. The projects contained within the Draft Fiscal Years 2009-2013 Capital Improvement Program generally conform with the policies and guidelines pertaining to the Community Facilities Plan Proposals within the Master Plan.
3. The Chair is authorized to forward a letter indicating the Planning Commission Recommendation to the Mayor.

Mr. Stup answered Commission questions with regard to the CIP and Staff Recommendation.

Applicant: None, since it was the City.

Planning Commission Minutes
April 28, 2008
Page 9 of 11

Public Comment: None.

Rebuttal: None.

Decision:

Ms. Koenig made a motion to find the 2009-2013 CIP consistent with the City of Brunswick Master Plan in accordance with Staff Recommendation and instructed Staff to forward that finding to the Mayor & Council in the form of a Staff Report or letter; Mr. Dougherty Seconded the motion.

VOTE: Yea 5 Nay 0

County APFO Amendment Referrals

Review of the proposed Board of County Commissioner's amendment of the County APFO, Section 1-20-5(B) with regard to Definitions of Housing for Older Persons of the County APFO for recommendation to the Mayor & Council. FcPc File Number AT-07-08

Staff Presentation and Recommendation:

Mr. Stup presented the Staff Report for the proposed amendment to the County APFO.

Staff recommends that the Planning Commission forward an Approval Recommendation to the Mayor and Council for the following reasons:

1. The proposed amendment does not undermine the intent of the City APFO, especially the School Test.
2. It does not appear to create additional opportunities for development to infringe into the Ag and Conservation Zones.
3. It does not encourage development outside of designated Growth Areas.
4. The City's ability to execute its Master Plan appears would not be compromised.

Staff further recommends the recommendation be forwarded to the Mayor and Council as part of the Staff Report.

Mr. Stup answered Commission questions with regard to the proposed amendment and Staff Recommendation.

Applicant: None since the request was from the Frederick County.

Public Comment: None.

Rebuttal: None.

Planning Commission Minutes
April 28, 2008
Page 10 of 11

Decision:

Mr. Stull made a motion to approve the amendments in accordance with Staff Recommendation; Ms. Koenig seconded the motion.

VOTE: Yea 5 Nay 0

Review of the proposed Board of County Commissioner's amendment of the County APFO, Section 1-20-7 Exemptions of APFO Approval for recommendation to the Mayor & Council. FcPc File Number AT-07-09

Staff Presentation and Recommendation:

Mr. Stup presented the Staff Report for the proposed amendment to the County APFO.

Staff recommends that the Planning Commission forward an Approval Recommendation to the Mayor and Council for the following reasons:

1. The proposed amendment does not undermine the intent of the City APFO.
2. It does not appear to create additional opportunities for development to infringe into the Ag and Conservation Zones.
3. It does not encourage development outside of designated Growth Areas.
4. The City's ability to execute its Master Plan appears would not be compromised.

Staff further recommends the recommendation be forwarded to the Mayor and Council as part of the Staff Report.

Mr. Stup answered Commission questions with regard to the proposed amendment and Staff Recommendation.

Applicant: None since the request was from the Frederick County.

Public Comment: None.

Rebuttal: None.

Decision:

Mr. Krigbaum made a motion to approve the amendments in accordance with Staff Recommendation; Ms. Koenig seconded the motion.

VOTE: Yea 5 Nay 0

Public Comment:

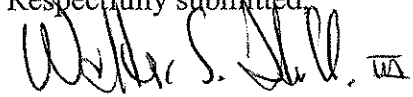
Mr. Stup reminded the Commission that there would not be a meeting on May 19, and the following scheduled meeting is June 23, 2008 at 7:00 PM.

Adjournment

Planning Commission Minutes
April 28, 2008
Page 11 of 11

The meeting was adjourned at 8:350 PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Walter S. Stull, III", with a small flourish at the end.

Walter S. Stull, III, Secretary